

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
W.R. Grace & Co., et al.,	:	Case No. 01-1139 (JKF)
	:	Jointly Administered
Debtors.	:	
	:	

**PHASE II PRE-TRIAL STATEMENT OF AXA BELGIUM**

AXA Belgium as successor to Royal Belge (“AXA Belgium”), pursuant to paragraph 4 of the Order Regarding Phase II Pre-Trial Proceedings (Dkt. No. 22347) submits this Phase II Pre-Trial Statement:

**A. Statement of Issues and Joinder**

AXA Belgium intends to raise all of the issues listed in (i) Objection Of AXA Belgium To Confirmation Of First Amended Joint Plan Of Reorganization Under Chapter 11 Of The Bankruptcy Code Of W.R. Grace & Co., Et Al., The Official Committee Of Asbestos Personal Injury Claimants, The Asbestos PI Future Claimants' Representative, And The Official Committee Of Equity Security Holders Dated February 27, 2009 [Dkt. No. 20872] (Dkt. No. 21803); and (ii) the Phase II Trial Brief and Joinder of AXA Belgium (Dkt. No. 22438) (collectively, the “AXA Belgium Objections”). AXA Belgium joins in the pre-trial submission of Allianz S.p.A., f/k/a Riunione Adriatica Di Sicurta, Allianz SE, f/k/a Allianz Aktiengesellschaft, and Fireman's Fund Insurance Company, and any other insurers, as applicable to AXA Belgium.

Without limiting in any way or waiving any of the issues in the AXA Belgium Objections, AXA Belgium intends to raise the following issues at the Phase II Confirmation Hearing:

- Whether the Plan fails to comply with the requirements of 11 U.S.C §§ 1123(a)(1)-(3)?

- Whether the Plan cannot be confirmed because it is not Insurance Neutral?
- Whether the exculpation and release provisions of the Plan are overbroad and improperly affect AXA Belgium?
- Whether the anti-assignment provisions in the insurance policies subscribed to by AXA Belgium and/or any rights thereunder prohibit the assignment of those policies to the Asbestos PI Trust?
- Whether the Plan improperly obligates AXA Belgium to pay to the Asbestos Trust any amount in excess of the amount actually paid by the Trust to the holders of Asbestos PI Claims resulting in an improper acceleration of AXA Belgium's obligations?
- Whether the Plan purports to improperly confer jurisdiction over non-core insurance coverage disputes to the Bankruptcy Court?

**B. List of Witnesses**

AXA Belgium reserves the right to call the witnesses identified on its Final Witness Designation. At this time, AXA Belgium intends to call the following witnesses at the Confirmation Hearing for the purposes set out in the subject matter of testimony below as well as for the reasons stated in the submission of the other insurers to which AXA Belgium has joined:

<b>Witness</b>	<b>Manner of Testimony<sup>1</sup></b>	<b>Subject Matter of Testimony</b>
Jay Hughes	Live testimony	<ul style="list-style-type: none"> <li>• Terms and Conditions of insurance policies</li> <li>• Claims history</li> <li>• Non-Waiver of Rights Under policies</li> <li>• Terms of Plan</li> </ul>
Jeffrey Posner	Live Testimony	<ul style="list-style-type: none"> <li>• Terms and Conditions of insurance policies</li> <li>• Claims history</li> <li>• Non-Waiver of Rights Under policies</li> <li>• Terms of Plan</li> <li>• Debtors' understanding of their obligation to vigorously defend claims made against them as part of</li> </ul>

<sup>1</sup> AXA Belgium reserves its right to call these witnesses by live testimony but will otherwise rely on portions of their deposition testimony.

<b>Witness</b>	<b>Manner of Testimony<sup>1</sup></b>	<b>Subject Matter of Testimony</b>
		their duties under insurance policies
Richard Finke	Live Testimony	<ul style="list-style-type: none"> <li>• Terms and Conditions of insurance policies</li> <li>• Claims history</li> <li>• Non-Waiver of Rights Under policies</li> <li>• Terms of Plan</li> </ul>
Peter Van N. Lockwood	Deposition Designation	<ul style="list-style-type: none"> <li>• Terms of Plan and Treatment of insurance policies Under Plan</li> <li>• ACC and FCR's involvement in drafting of Asbestos PI Trust Agreement and TDP.</li> </ul>

### **C. List of Exhibits**

AXA Belgium intends to offer the following exhibits at the Confirmation Hearing:

- Declaration of Eileen McCabe with policy-related materials [Dkt No. 22276];
- First Amended Joint Plan Of Reorganization Under Chapter 11 Of The Bankruptcy Code Of W.R. Grace & Co., Et Al., The Official Committee Of Asbestos Personal Injury Claimants, The Asbestos PI Future Claimants' Representative, And The Official Committee Of Equity Security Holders Dated February 27, 2009 [Dkt. No. 20872]; and
- Responses to Discovery Requests to Plan Proponents propounded by AXA Belgium;
- Exhibits designated by other insurers to which AXA Belgium joined.

### **D. Reservation of Rights and Joinder**

AXA Belgium has endeavored to prepare as full and complete a pretrial statement as possible at this stage of the proceedings in connection with confirmation of the Plan. To date, the Plan Proponents have not responded to AXA Belgium's Plan Objection or Phase II Trial Brief. Accordingly, AXA Belgium reserves the right to amend and/or supplement this Pretrial Statement as necessary following receipt of the Plan Proponents Phase II Trial Brief. AXA Belgium further reserves the right to: (i) introduce testimony or exhibits for rebuttal or impeachment purposes; (ii) call as a witness any person named or otherwise referred to in Plan

Proponents' Pretrial Statement; and (iii) introduce any exhibits referred to, either directly or indirectly, in the Plan Proponents' Pretrial Statement.

In addition to the specific joinders set out above, AXA Belgium otherwise joins in the Pretrial Statements of all other "Phase I" insurers objecting to confirmation of the Plan, as applicable.

WHEREFORE, AXA Belgium requests that this Court sustain the Objections to the First Amended Plan of Reorganization filed by AXA Belgium, and grant AXA Belgium such other and further relief to which it may be justly entitled.

Dated: July 20, 2009

Respectfully submitted,

JOHN SHEEHAN SPADARO, LLC

/s/ Eileen T. McCabe

Eileen T. McCabe

[eileen.mccabe@mendes.com](mailto:eileen.mccabe@mendes.com)

Mendes & Mount LLP

750 Seventh Avenue

New York, NY 10019

212-261-8000 p

212-261-8750 f

Michael A. Shiner, Esquire (PA ID 78088)

[mshiner@tuckerlaw.com](mailto:mshiner@tuckerlaw.com)

Tucker Arensberg, P.C.

1500 One PPG Place

Pittsburgh, PA 15222

412-594-5586 p

412-594-5619 f

John S. Spadaro, Esq. (No. 3155)

724 Yorklyn Road, Suite 375

Hockessin, DE 19707

302-235-2516 p

302-235-02536 f

*Counsel for AXA Belgium as successor to Royal  
Belge*